

HUMAN SERVICES BOARD

INTRODUCTION

The hearing in this matter was held on April 24, 2008. The Department's case consisted solely of the transcript of the daughter's testimony at the trial held in Caledonia District Court on July 20, 2005 (Docket No. 4-1-05 Cacr). The petitioner testified in her own behalf, as did her brother, the alleged victim's uncle. The following findings of fact are based on that testimony, and on the

representations and stipulations of counsel, as noted, regarding certain other evidence.

FINDINGS OF FACT

1. The petitioner is the mother of four children, including A., her oldest child, who is the subject of these proceedings.

2. In 2004 the petitioner was living in Vermont with her children. The children's father was living in New Hampshire. The parents had been involved in a bitter divorce. The petitioner had been awarded custody of the children and had moved with them to Vermont after a failed attempt by the father to prevent her move. The father had visitation rights.

3. A. was eleven years old at the time in question. The petitioner admits she is a strict disciplinarian. During the summer of 2004 she and A. began having clashes over issues like chores, appropriate attire, and church attendance. A.'s father was less strict about these issues.

4. In November 2004, immediately following a weekend visit from which the father did not return the children to the petitioner on time, A. and one of her younger brothers ran away from petitioner's home and called their father from

a nearby store. The police intervened and took A. and her brother that night to the home of the petitioner's brother.

5. The next day, in school, it appears that A. reported at least one incident of alleged abuse by the petitioner. An investigation followed, after which A. went to live with her father. The petitioner was charged with assault, but was acquitted following a jury trial (see *supra* and *infra*).

6. In her testimony at that trial, A. alleged that the petitioner had hit her on three separate occasions. One was a punch in the stomach, another was three slaps in the face, and the third was grabbing her by the neck and pushing her head into the kitchen sink. She said that all three "hurt" and that her cheek was red and that she had a bloody nose after having been slapped.

7. On cross-examination at the trial, A. admitted that she frequently got bloody noses from dry air and stress. The petitioner and her brother confirmed this at the hearing. Moreover, A. testified at trial that the slapping incident occurred about two weeks *before* the night she ran away. The parties stipulated that except for a bloody nose that others observed *the night she ran away*, there is no evidence that anyone ever observed or reported any signs of physical injury to A.

8. A.'s testimony at the trial, at least as it appears in the transcript, was vague, rote-like and rehearsed (albeit poorly). She had to be cued (arguably led) by state's counsel to remember all three incidents, and provided virtually no detail or context. She denied that the petitioner had said anything to her or that there had been any provocation or dispute of any sort prior to any of the incidents, just that her mother "got mad" and struck her.

9. The petitioner has steadfastly denied the allegations. She admits that when she was married to A.'s father she had been "substantiated" by the state of New Hampshire for slapping one of her stepchildren. No further details of this alleged incident were introduced at the hearing, and it appears that even after this alleged incident, the family court in New Hampshire had awarded the petitioner custody of her own children when she and those children's father were divorced. Although the report of this prior incident may be problematic, it can also be viewed as further context for the later allegations being made. Thus, the hearing officer deems it of negligible weight and assistance in resolving the factual issues herein.

10. A. is now fourteen years old. As noted in the Board's preliminary ruling in this matter, the Department

alleges that her father refused to have her testify in this hearing. Unfortunately for the Department, this refusal does not enhance the credibility of A.'s testimony as it appears in the trial transcript.

11. Based on the above it is found that A.'s testimony at the petitioner's criminal trial lacked credibility. Therefore, the Department has not established by a preponderance of evidence that any of the alleged incidents occurred, much less that they caused A. any injury.

ORDER

The Department's decision is reversed, and the petitioner's name shall be expunged from the Department's child abuse registry.

REASONS

The Department is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the reported facts are "unsubstantiated". The statute in effect at the time of these allegations provided:

A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is not substantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing

under section 3091 of Title 3 on the application at which hearing the burden shall be on the Commissioner to establish that the record shall not be expunged.

33 V.S.A. § 4916(h)

The statute at 33 V.S.A. § 4912 defined abuse and neglect, in pertinent part, as follows:

- (2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare . . .
- (3) "Harm" to a child's health or welfare can occur when the parent or other person responsible for his welfare:
 - (A) Inflicts, or allows to be inflicted, upon the child, physical or mental injury . . .

As noted above, the Department has not met its burden of proof that the petitioner committed any act covered by the above statute. Therefore, its decision must be reversed.

#